CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 92

DEMETRIUS PHILIPPIDES, PETITIONER,

vs.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 25, 1930

CERTIORARI GRANTED MAY 26, 1930

(34,978)



(34,978)

SUPREME COURT OF THE UNITED STATES

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[fo]. 1] United States of America, Department of Labor, Washington

WARRANT OF ARREST

99127/315. No. 55644/978

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Dimitrius Philipides, who landed at the Port of New York, ex S. S. "Byron", on the 10th day of September, 1925, has been found in the United States in violation of the Immigration Act of May 26, 1924, for the following among other reasons:

That he has remained in the United States for a longer time than permitted under the said act or regulations thereunder.

I, W. N. Smelser, assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized payable from the appropriation "Expenses of regulating immigration, 1929"; pending further proceedings the alien may be released from custody under bond in the sum of $500.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 5th day of September, 1928.

W. N. Smelser, Assistant to the Secretary of Labor.

[fol. 2] United States of America, Department of Labor, Washington

WARRANT OF DEPORTATION

99127/315. No. 55644/978

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me, Assistant to the Secretary of Labor, after due hearing before Immigrant Inspector A. E. Hanney, held at Ellis Island, N. Y. H., I have become satisfied that the alien Dimitrius Philipides, or Demetrius Philippides, or Dimitrios Filipides, who landed at the Port of New York, N. Y., ex S. S. "Byron", on the 10th day of September, 1925, has been found in the United States in violation of the Immigration Act of May 26, 1924, to wit:

That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Greece, the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1929", including an attendant, if necessary. The alien may be permitted to depart voluntarily or ship foreign one way, without expense to the United States, [fol. 3] to any country of his choice, except foreign contiguous territory, or adjacent islands, upon consent of the surety, such departure to be verified, and to be considered a satisfactory compliance with the terms of this warrant. Delivery of the alien and acceptance for deportation, or proof of voluntary departure, or shipment foreign, shall serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient authority.

Witness my hand and seal this 2nd day of March, 1929.

W. N. Smelser, Assistant to the Secretary of Labor.

[fol. 4]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

WRIT OF HABEAS CORPUS

The President of the United States to Benjamin Day, Commissioner of Immigration, Port of New York, Greeting:

We command you that you have the body of Demetrius Philippidis, by you imprisoned and detained as is said, together with the time and cause of such imprisonment and detention by whatsoever name it shall be called or charged, before a Judge of this Court at a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House in the Post Office Building, Park Row and Broadway, Borough of Manhattan, City of New York, on the 19th day of April, 1929, at 10:30 o'clock in the forenoon, at Room 235, to do and receive what shall then and there be considered concerning him, and have you then and there this writ.

Witness Hon. John C. Knox, U. S. District Court, ~~Southern District~~ of New York.

Jno. C. Knox, Judge of the United States District Court for the Southern District of New York.
Alex. Gilchrist, Jr., Clerk. (Seal.)

Dated this 15th day of April, 1929.

The within writ is allowed this 15th day of April, 1929.
Jno. C. Knox, Judge of the United States Court.

[fol. 5] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES, or DIMITRIOS FILIPIDES, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent

Application for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable District Court of the United States in and for the Southern District of New York:

The relator above named, by John D. Lynn, his attorney, petitions the Court and respectfully shows:

1. That the relator was arrested by Inspector M. A. Pitt, of the United States Department of Labor, Immigration Service, at 11:00 A. M., December 19th, 1928, in the City of Long Beach, Nassau County, N. Y., under and by virtue of a "Department Warrant of Arrest No. 55644/978, dated September 5th, 1928." That he was brought to Ellis Island, New York Harbor, N. Y., at 3:45 P. M., on December 19th, 1928.

[fol. 6] II. That the aforesaid warrant of arrest charged him

"with being in the United States in violation of the Immigration Act of May 26, 1924, for the reason that he remained longer in the United States than permitted under said act or regulations made thereunder."

III. That relator was granted a hearing at Ellis Island, N. Y. H., on December 20th, 1928, said hearing being continued and completed on January 7th, 1929, before Inspector A. E. Hanney. That on motion of relator's attorney, bail was fixed in the sum of $500.00, and he was released under bond of the National Surety Company, #5011496.

IV. That on January 8th, 1929, Inspector Hanney officially found that the charge contained in the warrant "having been sustained", recommended the deportation of the relator at the expense of the Government.

V. That relator, by John D. Lynn, Esq., of 140 Nassau Street, New York, N. Y., his attorney, immediately filed a brief protesting against his arrest and the decision of the examining Inspector.

VI. That thereafter, and on or about the 10th day of April, 1929, relator received by mail a copy of a letter signed by Byron H. Uhl, Assistant Commissioner of Immigration, U. S. Dept. of Labor, dated April 8th, 1929, Ellis Island, New York Harbor, N. Y., under file 99127/315, addressed to the National Surety Company, 118 William Street, New York, N. Y., directing them to surrender the [fol. 7] relator at the Law Office, Ellis Island, N. Y. H., N. Y., for deportation, on or before noon, April 18th, 1929, under penalty of forfeiture of the penal amount of the bond. That a postscript to said letter directed the relator

to forward his baggage to the pier of the S. S. "Providence" (Fabre Line), sailing April 19th, 1929.

VII. That in response thereto, relator duly surrendered himself under protest to the Law Office, Ellis Island, New York Harbor, at 10:00 A. M., April 15th, 1929.

VII. That the relator is now imprisoned, detained and restrained of his liberty by reason of having been taken into custody and is now awaiting deportation on April 19th, 1929, on the S. S. "Providence" of the Fabre Line.

IX. That your relator's restraint, detention and imprisonment is by virtue of an order of the U. S. Department of Labor, contained in a letter dated April 8th, 1929, signed by Byron H. Uhl, Assistant Commissioner of Immigration at Ellis Island, N. Y. H., and a certain Department Warrant of Arrest No. 55644/978, dated Sept. 5th, 1928, a copy of said order being annexed hereto.

X. That your relator claims that there is no legal authority or right vested in the U. S. Department of Labor, Immigration Service, to detain, restrain and imprison him for the purpose of deportation in that such action is illegal, without authority and contravenes an Act of Congress of May 26, 1924, more specifically described as Chapter 190, Section 19, 43 Stat. 164. That said law reads as follows:

[fol. 8] No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. Any alien seaman who shall land in a port of the United States contrary to the provisions of this subchapter shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at

the expense of the appropriation provided in section 156 of this title. "(Feb. 5, 1917, c. 29, §34, 39 Stat. 896; May 26, 1924, c. 190, §19, 43 Stat. 164.")

XI. That it is herein contended that as a matter of fact that said relator was not apprehended and taken into custody within the "three year period" as prescribed by the section hereinbefore set forth.

XII. That is has been held by Judge Augustus N. Hand in U. S. ex rel. Danikas vs. Day, Circuit Court of Appeals, 2nd Circuit, July 20, 1927, that said section is a statute of limitations and a bar to deportation of an alien when three year period has been exceeded.

XIII. That no previous application for a Writ of Habeas Corpus has been made.

[fol. 9] XIV. Wherefore, your relator prays that a Writ of Habeas Corpus may issue directed to said Benjamin M. Day, Commissioner of Immigration, Port of New York, to bring before the Court forthwith the body of the said Demetrius Philippides or Dimitrios Filipides, relator herein, to do and receive what said Court shall then and there consider concerning him in his behalf, and then and there show cause, if any, for the taking and detaining the said Demetrius Philippides or Dimitrios Filipides for deportation.

XV. Relator further prays that the said Court may determine the legality of the imprisonment or restraint of the said Demetrius Philippides or Dimitrios Filipides, and to further determne the matter of his liberty, and thereupon dispose of his case pursuant to law.

XVI. That in view of the above circumstances it is respectfully submitted and urged that it will subserve the interests of justice that a Writ of Habeas Corpus in this Court be issued forthwith.

John D. Lynn.

[fol. 10] *Duly sworn to by Thos A. Kane. Jurat omitted in printing.*

[fol. 11] U. S. Department of Labor, Immigration Service

Office of Commission of Immigration, Ellis Island, New York Harbor, N. Y.

In answering refer to No. 99127/315.

April 8, 1929.

National Surety Company, 118 William Street, New York, N. Y.

Att. Mr. J. H. Claypoole, Custodian Department

Sir: You are hereby directed to surrender at the Law Office, Ellis Island, New York Harbor, N. Y., for deportation, on or before noon, April 18th, 1929, the alien Dimitrius Phillipidis, for whom you deposited Bond #5011496, on December 20, 1928.

Failure to comply with the foregoing instructions, will result in forfeiture of the penal amount of the Bond.

Respectfully, (Signed) Byron H. Uhl, Assistant Commissioner.

FK.

Official Copy to Alien, 11 E. Park St., Long Beach, L. I., N. Y., with the request that he forward all bulky baggage to the pier of the S. S. "Providence", (Fabre Line), sailing April 19, 1929. Hand baggage only is to be brought to Ellis Island when surrendering.

(Signed) Byron H. Uhl, Assistant Commissioner.

[fol. 12] In United States District Court

[Title omitted]

Return to Writ of Habeas Corpus.

Southern District of New York:

Vincent Praggio, being duly sworn, says that he is and during all the times herein mentioned has been an immigration inspector in the service of the United States; that he is attached to the law department of the immigration serv-

ice of the United States at Ellis Island; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the warrant of habeas corpus herein.

In compliance of the directions of this Court the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law and that the writ should therefore be quashed.

[fol. 13] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien was held were not regular, fair and in compliance with the statute applicable in such cases nor facts upon which this Court can determine that the proceedings were either irregular, unfair or not in compliance with the said statute.

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusions of the Department of Labor upon which the warrant of deportation was issued.

(c) It does not allege that there was any evidence before the Department of Labor upon which it based or could have based its findings and conclusions in accordance with which the warrant of deportation was issued.

(d) It does not appear by allegations of fact that the issue sought by the petition now to be litigated in this court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien copies of which are produced and filed herewith as part of its return,

1. The relator herein entered the United States at the Port of New York on September 15th, 1925, on the S. S. "Lord Byron". He had been employed as a cook on this [fol. 14] vessel and on his arrival he deserted, and has re-

mained in this country ever since. On December 19th, 1928, the alien was served with a warrant of arrest, dated September 5th, 1928. The warrant of arrest charged that the relator had been found in the United States in violation of the Immigration Act of May 26th, 1924, for the reason that he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder.

The relator admits that he deserted the vessel on which he had been previously engaged, immediately upon his entry and that he has ever since been employed in a restaurant. The relator was not in possession of an unexpired immigration visa at the time of his landing.

2. As appears from the record, the alien was duly informed and apprised of the charges against him. He was afforded a full, complete and fair hearing by the Department of Labor upon the said charges and was afforded a full, complete and fair opportunity to answer and submit evidence upon said charges. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained. That they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event it cannot be said on the record herein the Department of Labor abused the discretion vested in it by Congress and its determination was final and conclusive.

3. Deponent denies any knowledge or information sufficient to form a belief as to the truth of the allegations of [fol. 15] relator's petition except as to the allegations heretofore expressly admitted.

Wherefore deponent prays that the writ of habeas corpus herein be dismissed and the said alien remanded to the custody of the Immigration Department at Ellis Island, New York.

(Signed) Vincent Praggio.

Sworn to before me this 19th day of April, 1929. Armand Chamhalen, New York, Notary Public, New York County, #375. Term expires March 30, 1931.

[fol. 16] U. S. Department of Labor, Immigration Service, Ellis Island, N. Y. H.

File No. 99127/315

DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES

RECORD OF HEARING

Hearing held at Ellis Island, N. Y. H., on December 20, 1928.

Under Department warrant of arrest No. 55644/978, dated Sept. 5, 1928.

Present for the Government: Inspector A. E. Hanney; Secretary F. B. Nathanson; Interpreter D. Christopher (Greek).

Present for the alien: Alien present in person, represented by attorney Thomas A. Kane, 140 Nassau St., N. Y. C.

Alien brought to Ellis Island by: Inspector M. A. Pitt. Date: 2:45 P. M., December 19, 1928.

Result of medical examination (State finding): Not certified.

Verification of landing: "Byron", 9-10-25, Crew.

Last foreign address: Mother, Maria Philippides, Strapourgias, Andras, Greece.

U. S. Address: 11 E. Park St., Long Beach, L. I., N. Y.

Relatives in U. S.: None.

Passport status: Alien has no passport.

Description: 5′ 5″, wt. 140 lbs., black hair, brown eyes, scar on right eyebrow.

Property and effects: $300 in Greek Bank, 205 West 33rd St., N. Y. C.; baggage at 11 E. Park St., Long Beach, L. I. N. Y.

Foreign address to which deportable: C/o Mother, Maria Philippides, Strapourgias, Andras, Greece.

[fol. 17] At Ellis Island, N. Y. H., December 20, 1928.

Alien, sworn by Inspector Hanney, testifies in Greek, through Interpreter Christopher, as follows:

Q. What is your correct name?

A. Demetrius Philippides.

Q. Have you ever been known by any other name?
A. No.
Q. What is your present address?
A. 11 E. Park St., Long Beach, L. I.
Q. What is your business address?
A. I work in a restaurant in the same place where I live. I live in the rear part of the building.
Q. I now show and serve upon you Department warrant of arrest No. 55644/978 dated September 5, 1928, in which you are charged with being in the United States in violation of the immigration act of May 26, 1924, for the reason that you remained longer in the United States than permitted under the said act or regulations made thereunder. Under the law you have the right to be represented by counsel at your own expense. Do you wish to be so represented?
A. Yes, I have an attorney here, Mr. Thomas A. Kane, 140 Nassau St., New York City, who will represent me.

Inspector to attorney

Q. Are you ready to proceed with the hearing now?
A. No, I would like to get an adjournment, if possible.

[fol. 18] To Alien

Q. Pending final disposition of your case are you able to furnish bond in the sum of $500?
A. Yes.
Q. In the event that you secure bond what will be your address?
A. 11 E. Park St., Long Beach, L. I., N. Y.
Q. You understand that in the event that you secure bond, you are to appear at this station whenever requested? If you fail to do so your bond will be forfeited?
A. Yes.

Hearing adjourned to January 3, 1929, at 10 A. M.

Continuation of Hearing in the Case of Demetrius Philippides or Dimitrios Filipides

Preliminary hearing held at Ellis Island, N. Y. H., on December 20, 1928.

Hearing continued at Ellis Island, N. Y. H., on January 7, 1929.

Present on behalf of the Government: Inspector A. E. Hanney, Interpreter Mrs. Yovtcheff (Greek), Secretary Ruth Tashman.

Alien was present in person; was represented by Attorney Thomas A. Kane, of 140 Nassau Street, New York City.

[fol. 19] Inspector to attorney:

Q. Are you ready at this time to proceed with the hearing in the case of your client, Demetrius Philippides?

A. Yes.

Alien, being duly sworn, testified in Greek, through interpreter, as follows:

Q. How old are you and when and where were you born?
A. 21, born in Andras, Greece, July 10, 1908.
Q. What nationality and race are you?
A. Greek, Greek race.
Q. What is your occupation?
A. I am a cook.
Q. Are you married or single?
A. Single.
Q. What is the nearest large city to your birthplace?
A. Siros, which is three hours' away by boat.
Q. What was you- last adress in your native country?
A. Strapourgias, Province of Andras, Greece.
Q. When did you last leave your native country?
A. April 25, 1925.
Q. Where did you go at that time?

(Attorney objects—objection noted and overruled.)

A. I went to Piraeus, Greece.
Q. How long did you remain in Piraeus?
A. Fifteen days.
Q. Where did you go when you left Piraeus?

(Attorney objects—objection overruled.)

[fol. 20] A. I left Piraeus as a sailor.

Q. What was the name of the ship that you were engaged on?

(Attorney objects—objection overruled.)

A. "Byron."

Q. Did you board the ship as a member of the crew?

A. Yes, as a sailor.

(Attorney objects—objection noted, overruled.)

Q. Where did you sail from on the S. S. "Byron"?

(Attorney objects—objection overruled.)

A. From Piraeus.

Q. At the time you left Piraeus, what was the ship's destination?

(Attorney objects—objection overruled.)

A. Patras to New York.

Q. Did the S. S. "Byron" arrive at the Port of New York at any time while you were a member of the crew?

(Attorney objects—objection overruled.)

A. Yes.

Q. When did you arrive in New York City?

(Attorney objects—objection overruled.)

A. I do not remember.

Q. I show you a verification of landing which indicates that one Demetrius Filipidis arrived at the Port of New [fol. 21] York on the S. S. "Byron", September 10, 1925, at that time being a member of the crew; under Remarks, it appears that the above seaman was engaged at Piraeus August 20, 1925, and that no record of headtax being paid at New York appears and that he was reported as a deserter by the ships' owners September 18, 1925. Do you identify yourself as the person indicated in this verification of landing?

(By Attorney: I object to the question and also to the fact that the paper presented to the alleged alien for his identification has not been connected in the evidence with this particular alien.)

A. (Attorney answers for alien:) I do not identify myself as the individual mentioned in this document.

Q. At the time of your entry at the Port of New York, September 10, 1925, did you desert the SS. "Byron" or did you remain a member of same?

(Attorney objects; objection overruled.)

A. I left the ship and I went to New York.

Q. At the time of your entry, were you in possession of an unexpired immigration visa issued by an American Consul?

(Attorney objects; objection overruled.)

A. No.

Q. What is your father's name and where was he born?

A. Theodoros, born in Andras.

Q. Is he living or dead?

A. He is dead.

Q. What was your mother's name and where was she born?

[fol. 22] A. Maria, born in Andras, she is home in Greece.

Q. What is her present address?

A. Strapourgias, Andras, Greece.

Q. Have you any brothers or sisters in Greece?

A. Two sisters in Greece and three brothers.

Q. What are their names?

(Attorney objects; objection overruled.)

A. Ellen, Violette and brothers, Nicholas, John and Haralambos—all except Nicholos with mother and he is in Piraeus, Greece, his address being Odhos Georgiou Seize, Piraeus, Greece.

Q. Have you any relatives in the United States?

(Attorney objects; objection overruled.)

A. None.

Q. When and where were you baptised? In what church?

A. I do not remember the date but the name of the church is Aio Pandeleimon in Strapourgies.

Q. Did you also attend this church?

A. Yes.

Q. What schools did you attend?

A. In Lamira, Greece, public school.

Q. By whom were you last employed in your native country?

(Attorney objects; objection overruled.)

A. For my father.

Q. Have you a passport or any other document of your nationality?

(Attorney objects; objection overruled.)

[fol. 23] A. Yes, I have a birth certificate.

(Birth certificate placed on file and made part of record. Same indicates that alien was born in Lamira, Greece.)

(By Attorney: I object to the introduction of the alleged birth certificate because of the fact that there has been no identification of same by the alleged alien and there is no proof of any connection between the alleged alien and the individual described on the said certificate.)

Q. Have you ever been arrested or in prison?

(Attorney objects; objection overruled.)

A. Never.

Q. Have you ever been an inmate of any Hospital or institution?

(Attorney objects; objection overruled.)

A. No.

Q. Have you any money in the bank or any other property?

(Attorney objects; objection overruled.)

A. $300 in the Greek Bank at 205 West 33rd Street, New York City.

Q. Have you any baggage or property anywhere?

A. Yes, at my address, 11 East Park Street, Long Beach, Long Island.

Q. Have you anything to say why you should not be deported to the country of which you are a citizen?

[fol. 24] (By Attorney for alien:)

A. I believe that I entered this country legally and therefore am entitled to the rights and privileges of residence

of this country and consequently object to these proceedings and any possible deportation.

By Inspector to alien:

Q. In the event that the Department gives you permission to reship foreign one way in lieu of deportation, are you willing to take advantage of this opportunity?

(Attorney objects; objection overruled.)

A. Yes, in case I have to go back.

Hearing closed.

SUMMARY OF HEARING

Demetrius Philippides or Dimitrios Filipides, 21, male, single, seaman, native and citizen of Greece, Greek race, arrived at the Port of New York as a member of the crew of the S. S. "Byron", September 10, 1925, and deserted. Arrival verified.

Hearing held at Ellis Island, N. Y. H., December 20, 1928, and continued on January 7th, 1929, by Inspector A. E. Hanney under Department warrant of arrest 55644/147, September 5, 1928, charging "Remained Longer". Alien present in person. Represented by counsel, Thomas A. Kane, 140 Nassau Street, New York City.

Warrant read and explained. No additional charge lodged.

[fol. 25] This alien arrived as a member of the crew on the vessel and date indicated in the first paragraph and deserted. He continued to remain in the United States longer than permitted under the Act of May 26, 1924, or regulations made therennder. His residence has not been made permanent under the immigration laws. He is not in possession of an unexpired immigration visa. Alien was released on bond in the sum of $500, his address being 11 East Park Street, Long Beach, Long Island, N. Y.

Alien is not in possession of a passport but is in possession of a birth certificate, same being attached to file. Bureau's assistance will be necessary in securing a passport for the alien.

The charge contained in the warrant having been sustained by the evidence, I recommend deportation of the alien at Government expense but that he be permitted to reship foreign one way in lieu of deportation.

A. E. Hanney, Immigrant Inspector.

[fol. 26] IN UNITED STATES DISTRICT COURT

DECISION

The within writ is dismissed. The relator's situation appears to fall squarely within the ruling of the Circuit Court of Appeals in U. S. ex rel., Rios vs. Day, 24 Fed. 654. Under the charge made against relator, he was not entitled to a hearing before a Board of Special Inquiry. See paragraph 3, subdivision 1 of Rule 6, Immigration Rules of March 1, 1927.

5/10/29.

Jno. C. Knox, U. S. D. J.

[fol. 27] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration, Port of York, Respondent

ORDER DISMISSING WRIT—May 17, 1929

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this Court on April 19, 1929, and the respondent having filed a return to said petition and writ duly verified and after hearing Thomas A. Kane, attorney for the relator, in support thereof, and Leon E. Spencer, Assistant United States attorney, in opposition thereto, it is

[fol. 28] Ordered that the said writ of habeas corpus be and the same hereby is dismissed and the relator, Deme-

trius Philippides or Dimitrios Filipides, be and he is hereby remanded to the custody of the Commissioner of Immigration of the Port of New York and it is further

Ordered that deportation of the said alien be stayed for a period of five days after the entry of this order, and it is further

Ordered that in the event that the relator perfects an appeal from this order to the Circuit Court of Appeals for the Second Circuit within five days of the date of the entry of this order, said relator, Demetrius Philippides or Dimitrios Filipides, shall be released from the custody of the Commissioner of Immigration pending the determination of said appeal on the relator filing cash, a bond or undertaking in the sum of $1,000, properly conditioned, with this Court, said bond to be approved by the Clerk of this Court.

John C. Knox, U. S. D. J.

Notice of settlement waived.

Thos. A. Kane, Goodhue, Morrison & Lynn, Attys. for Relator.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the relator-appellant in the above entitled cause and files the following assignment of errors upon which he will rely upon the prosecution of the appeal in the above entitled cause from an order made and entered herein by this Court on the 17 day of May, 1929.

The Court erred in dismissing the writ of habeas corpus for the following reasons:

First. The Court should have sustained the writ of habeas corpus because the evidence adduced before the Commissioner of Immigration showed that the relator was not arrested by the Department of Labor until more than three years after his entrance into the United States.

Second. The Court erred in finding as a matter of law that "the relator's situation appears to fall squarely within

[fol. 30] the ruling of the Circuit Court of Appeals in United States ex rel. Rios vs. Day, 24 Fed. 654."

Third. The Court erred in failing to find as a matter of law that the relator comes within the provisions of Section 34 of the Immigration Act of 1917, barring deportation beyond the three year period of limitation.

Fourth. The Court erred in finding as a matter of law the relator was not required to appear before a Board of Special Inquiry.

Whereas by the law of the land the said writ of habeas corpus should have been sustained and the relator-appellant should have been released from custody, by his attorney, John D. Lynn, the relator-appellant prays that the errors in the record and proceedings and the order made on the 17 day of May, 1929, may be reversed and for nought held and esteemed and that the said writ of habeas corpus herein be sustained and the relator-appellant released from custody and for such other and further relief as may be proper in the premises.

Dated N. Y., May 17th, 1929.

Thos. A. Kane, Attorney for Relator. Office & P. O. Address: 140 Nassau Street, Borough of Manhattan, City of New York.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

The petitioner, Demetrius Philippides, by his attorney, Thos. A. Kane, feeling aggrieved by the order made on the 17th day of May, 1929, by this Court, dismissing the writ of habeas corpus herein, does hereby appeal from the said order and decision of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and that a transcript of the record of the proceedings and papers upon which the said order and decision was made, and duly authenticated,

may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, N. Y., May 17th, 1929.

Thos. A. Kane, Attorney for Relator-Appellant.
Office and Post Office Address: 140 Nassau Street, Borough of Manhattan, New York, N. Y.

[fol. 32] In United States District Court

[Title omitted]

Order Allowing Appeal

On reading the petition of Demetrius Philippides or Dimitrios Filipides, made on his behalf by Thos. A. Kane, his attorney, dated May 16th, 1929, for appeal and consideration of the assignment of errors presented therewith, it is

Ordered, that the appeal herein be allowed as prayed for, and it is further

Ordered, that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated New York, May 17th, 1929.

Jno. C. Knox, Judge of the United States District Court for the Southern District of New York.

[fol. 33] Citation, in usual form, omitted in printing.

[fol. 34] In United States District Court

[Title omitted]

Stipulation on Appeal Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated November 25, 1929.

Thos. A. Kane, Attorney for Relator-Appellant.
Charles H. Tuttle, Attorney for Respondent-Appellee.

[fol. 35] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 36] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1929

No. 232

Argued January 16, 1930. Decided February 3, 1930

UNITED STATES OF AMERICA ex Rel. DEMETRIUS PHILIPPIDES or DIMITRIOS FILIPIDES, Relator-Appellant,

v.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Swan, Augustus N. Hand, and Chase, Circuit Judges

Appeal from the District Court of the United States for the Southern District of New York.

From an order dismissing a writ of habeas corpus, and remanding the relator to the custody of the respondent for deportation, the relator has appealed. Affirmed.

Thomas A. Kane, of New York City, for appellant.

Charles H. Tuttle, U. S. Atty., of New York City (Leon E. Spencer, Asst. U. S. Atty., of New York City, of counsel), for appellee.

OPINION

Per CURIAM.

The relator is an alien seaman, who arrived at the port of New York in September, 1925, as a member of the crew of a steamship. He deserted his ship, and ever since has remained here, working as an employee in a restaurant. More than three years after desertion he was arrested on a warrant charging him with remaining in the United States for a longer time than permitted by the Immigration Act of 1924 (43 Stat. 153), or the regulations prescribed there-

under. After a hearing at Ellis Island, he was ordered to be deported to Greece, whence he had come.

The relator contends that his deportation is governed by section 34 of the Immigration Act of 1917 (39 Stat. 896 [8 U. S. C. A. § 166]). The Commissioner of Immigration claims that section 14 of the Immigration Act of 1924 (43 Stat. 162 [8 U. S. C. A. § 214]) controls. The same contentions were made in United States ex rel. Piccolella v. Commissioner (decided December 2, 1929, C. C. A. 2) 36 F. (2d) 1022, where the facts were in all respects similar. On the authority of that case, the order is affirmed.

[fol. 37] In United States Circuit Court of Appeals, Second Circuit

United States ex Rel. Demetrius Philippides, Relator-Appellant,

v.

Benjamin M. Day, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Judgment—Filed Feb. 10, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 38] Endorsed: United States Circuit Court of Appeals, Second Circuit.

[File endorsement omitted.]

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,978. U. S. Circuit Court of Appeals, Second Circuit. Term No. 92. Demetrius Philippides, Petitioner, vs. Benjamin M. Day, Commissioner of Immigration, Port of New York. Petition for writ of certiorari and exhibit thereto. Filed April 25, 1930. File No. 34,978.